

1 AFTERNOON SESSION

2 THURSDAY, JULY 15, 1999

3 (1:18 p.m.)

4 CHAIRMAN WOOD: The Commission will go  
5 back on the record with Item No. 30 in today's agenda,  
6 which is Docket No. 16251, Project No. 19000 and  
7 Project No. 20000.

8 As announced before lunch, we'll take up  
9 the testing -- OSS testing in Project 20000, an update  
10 from the Staff first, and then we'll do the 16251  
11 items. Is there anything on 19000?

12

13 AGENDA ITEM NO. 30

14 PROJECT NO. 16251 - INVESTIGATION INTO  
15 SOUTHWESTERN BELL TELEPHONE COMPANY'S  
16 ENTRY INTO IN-REGION INTERLATA SERVICE  
17 UNDER SECTION 271 OF THE  
18 TELECOMMUNICATIONS ACT OF 1996  
19 DOCKET NO. 19000 - RELATING TO THE  
20 IMPLEMENTATION OF SWBT'S INTERCONNECTION  
21 AGREEMENTS WITH AT&T AND MCI  
22 PROJECT NO. 20000 - OPERATIONS SUPPORT  
23 TESTING RELATING TO THE INVESTIGATION  
24 INTO SOUTHWESTERN BELL TELEPHONE  
25 COMPANY'S ENTRY INTO THE INTERLATA  
26 TELECOMMUNICATIONS MARKET IN TEXAS

21 JUDGE SIEGEL: The one thing on 19000 --  
22 and I was told this was going to be filed, but I  
23 haven't seen it yet -- there were a couple of  
24 outstanding issues relative to changed management.

25 And it's my understanding that an

1 staff had brought up --

2 JUDGE FARROBA: Correct.

3 CHAIRMAN WOOD: -- because of the  
4 checklist Item 7 issue related here. We need to have  
5 the language here be consistent with our  
6 Recommendation No. 4 for Checklist Item 7.

7 JUDGE FARROBA: Right.

8 CHAIRMAN WOOD: So whatever you need to  
9 do to effectuate that, why don't we make that happen?

10 JUDGE FARROBA: Okay.

11 CHAIRMAN WOOD: The next three sections  
12 on the matrix deal with -- on Page 171 through 177 or  
13 so -- deal with items that I think are all going to be  
14 addressed by the MFN issues. So the fixes that we  
15 made to those sections, I don't think are a whole lot  
16 more for discussion unless you have anything.

17 Let's just fix with MFN those three,  
18 which I think -- if I am wrong, tell me. But I think  
19 that would result in those being deleted, and then  
20 that issue being moved to the appendix.

21 DSL, I don't plan on going too deep  
22 into it. I would have to say I was pretty discouraged  
23 by how far apart we are here. And  
24 I'm -- I just don't -- just kind of a mess obviously.  
25 I just don't think we got this done.

1                   And I'm kind of open to you-all's  
2 thoughts about -- I would like to move forward on the  
3 rest of this document and get it out. And then if  
4 anybody needs the DSL in the next month or so, they  
5 can go in and do the Covad deal. You can either  
6 graft -- I know there are some interim agreements in  
7 that docket. We can graft the broad commitments from  
8 the MOU on to that agreement and make that a workable  
9 attachment.

10                   JUDGE FARROBA: That's staff's approach.

11                   CHAIRMAN WOOD: Okay. You-all want to  
12 do that?

13                   JUDGE FARROBA: Right.

14                   COMM. WALSH: You just need something  
15 people can use until we get it sorted out.

16                   CHAIRMAN WOOD: Right. And then when we  
17 get sorted out, let's just put in there that that's  
18 superseded by whatever -- however it is sorted out,  
19 one way or the other.

20                   COMM. WALSH: Right.

21                   CHAIRMAN WOOD: But there are some  
22 things in there that -- these issues that we talked  
23 about in the MOU will not -- the industry-wide kind of  
24 things, for example. My understanding is that those  
25 are not in the Covad A --

1 JUDGE FARROBA: That's a proposal by all  
2 the CLECs at this point. So they would need to be  
3 added in there.

4 CHAIRMAN WOOD: Say that again? The  
5 agreements that we made in the MOU are not teed up in  
6 the arb. So those have to be grafted together somehow  
7 anyway.

8 JUDGE FARROBA: Right.

9 CHAIRMAN WOOD: Now, the only issue I  
10 have got is is the format the same -- is what they are  
11 arbitrating there something that can just easily be  
12 grafted into stuff or not?

13 JUDGE FARROBA: I guess Nara and I  
14 thought it wouldn't be too difficult for us to put  
15 together a DSL interim appendix that would graft those  
16 two together, what's currently the interim agreement  
17 and the DSL arbs along with the MOU commitments.

18 MR. SRINIVASA: On the first year  
19 letting all the technologies in?

20 CHAIRMAN WOOD: Right, that we agreed  
21 to.

22 JUDGE FARROBA: Right. And that would  
23 be superseded by the final arbitration award in the  
24 DSL dockets.

25 CHAIRMAN WOOD: The thing that was kind

1 of -- there was a lot of issues raised by all the  
2 parties through here. And it is just --

3                   COMM. WALSH: We'd be deciding them  
4 twice.

5                   CHAIRMAN WOOD: I just don't really want  
6 to kind of go through all that here. I think that  
7 would put this thing on a much slower track than we  
8 want on. So I would suggest we move forward on the  
9 PIA on the pages we have already talked about, which  
10 are really now done and get that done.

11                   And then when we get around to this, we  
12 will get around to this. Now, if we can merge it with  
13 the interim without a whole lot of extra work, fine.  
14 But if not, we will just do it one time when the Covad  
15 deal is done. So either. I mean --

16                   JUDGE FARROBA: Right. We can take a  
17 look at how much work it would be, and if it is not a  
18 lot, I think we have enough to go on with just the  
19 broad guidelines of grafting those two together to get  
20 it done.

21                   CHAIRMAN WOOD: I wouldn't let that hold  
22 up -- whenever this matrix -- whenever what we have  
23 already talked about today is done, let's get that up  
24 here and get it out so we can get going.  
25 And I would say we can move forward on that as a

1 freestanding document without DSL. I would love it to  
2 be there, but it is just not ready here yet.

3                   And there just wasn't a whole lot of  
4 movement between the parties on trying to make this  
5 helpful for the Commission. So I don't appreciate  
6 that, but just make it low on my part. If they  
7 weren't willing to fix it, I am going to make it  
8 lower. I don't think it keeps Bell out of long  
9 distance. You've got an interim agreement that works.  
10 We've to graft these other commitments as to the  
11 industry-wide stuff in here somewhere. But those  
12 commitments or what they are in the MOU.

13                   So those can be operationalized through  
14 the final arb, and maybe that's an incentive for  
15 parties to get that arbitration done. I don't think  
16 you are passed the point of congealing a settlement  
17 out of them. So that's fine. I think you have got an  
18 interim agreement.

19                   I know that was, Jim, you-all's concern  
20 if you have an interim agreement is that enough? I  
21 don't why see why it wouldn't. We've tried other  
22 states that have had -- I think there is even an FCC  
23 ruling that said interim agreements on various and  
24 sundry things are not a disqualifier.

25                   So my preference is that we get this

1 done, but I know we are not there yet. And rather  
2 than slow down the issuance of a final decision on the  
3 PIA to get this perfect, I would rather let that with  
4 its own history of victory of all the venom and hate  
5 go forward on its own path, and we will get the rest  
6 of this not so pleasant part done if that is workable.  
7 Jim?

8 MR. SHELLEY: I will just state for the  
9 record that I believe -- and although this is a very  
10 complicated issue, and you correctly stated it is full  
11 of venom -- that it has been our intent to do exactly  
12 what you described here, and that was to take the MOU  
13 and to graft on, if you will, the interim agreement,  
14 but that in and of itself is obviously proved to be  
15 something that has been very difficult to do and come  
16 to an agreement between the parties even to do that.

17 But we are agreeable to that process  
18 going forward to try to resolve this issue. I don't  
19 have -- if you believe the interim agreement suffices  
20 for 271 purposes here in Texas, that's plenty for me,  
21 but we will continue to work to craft a larger  
22 agreement if the Commission so wishes.

23 CHAIRMAN WOOD: Well, we are probably  
24 going to need to do it at least once at the end of the  
25 arb, and if we want to get it done now as I

1 will -- and I'll let you-all be the judges of that.

2 Kathy, you-all make a recommendation.

3                   If it can be done without a lot of  
4 effort to take the interim agreement from the two  
5 dockets and then graft onto that the additional  
6 agreements that we have with the company on the MOU,  
7 then let's do that. But if that is a whole lot of  
8 extra work, then let's just do it one time when we are  
9 through with the DSL dockets. We will just look at  
10 that, and we will rule on arbitration.

11                   So with that, then, the PIA is done.

12                   COMM. PERLMAN: Let's go back to the  
13 processes on how you want to get this completed.

14                   CHAIRMAN WOOD: Process. We had talked  
15 about a minute ago the -- a minute ago.

16                   COMM. PERLMAN: That was four hours ago.

17                   CHAIRMAN WOOD: About 240 of those  
18 minutes ago. I would say we've got the LIDB to do,  
19 too. Let me see what I have got here as far as the  
20 outstanding issues that would need something else.

21                   Let's -- actually I would be willing to  
22 delegate to staff the resolution of the LIDB issues  
23 and just let that be that. We can get with Limon and  
24 any parties we need to on the phone when we get back  
25 and --



 Southwestern Bell

December 7, 1999

Chairman Pat Wood, III  
Commissioner Judy Walsh  
Commissioner Brett Perlman  
Public Utility Commission of Texas  
1701 N. Congress Avenue, Suite 7-110  
Austin, Texas 78701

**RE: Request for Briefing and Rehearing on Arbitration Award ("Award"),**  
received after 3:00 pm on November 30, 1999; Docket No. 20226; *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*; Docket No. 20272; *Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*

Dear Chairman Wood and Commissioners Walsh and Perlman:

Southwestern Bell Telephone Company ("SWBT") respectfully requests that the Commission issue an Order setting forth a briefing schedule for rehearing of the issues in dispute in these Dockets. SWBT envisions that the parties' briefs would address the specific issues that require rehearing.

After review of the Award, it is clear that the Arbitrators relied on Orders of the Federal Communications Commission ("FCC") and other facts that were not addressed in the June hearing and subsequent briefing by the parties. The Award thus relies on matters about which the parties have not had the opportunity to comment or offer evidence. Principles of fairness dictate that parties subject to regulatory action be given the opportunity to address facts and law on which an agency relies for its rulings. Moreover, as explained below, Digital Subscriber Line ("DSL") issues are changing rapidly and thus the most current information should be included in this arbitration award. This request is made consistent with PUC Proc. Rule 22.78 and the Commission's actions in Docket 18082, where the Commission addressed an arbitration award prior to submission of an interconnection agreement.

In making this request, SWBT acknowledges the complicated nature of the issues surrounding DSL technologies and the hard work of the Arbitrators in these dockets. Nonetheless, the fact remains that xDSL technologies, industry standards, SWBT's

relevant processes and procedures, and the regulatory treatment of DSL have changed so greatly since the June hearing that much of the evidentiary record is incorrect and/or incomplete. The Award indirectly acknowledges the staleness of the record in its reliance on the FCC's *UNE Remand Order*<sup>1</sup>, the FCC's *SBC/Ameritech Merger Order*<sup>2</sup>, and the T2A<sup>3</sup>, none of which existed when the June hearing was completed. This gap between the evidentiary record and the Award's analysis leaves the Commission with an Award that does not have the benefit of a current picture of DSL issues, or of the parties' arguments as to those issues.

While not addressing all issues of concern SWBT has with the award, what follows are examples of how the Commission would benefit from additional briefing on these issues:

- ***Inconsistent Application of SBC/Ameritech Merger Order***

Citing the *Merger Order*,<sup>4</sup> the Award requires SWBT to develop enhanced preordering Datagate and EDI interfaces within six months.<sup>5</sup> The *Merger Order*, however, sets forth a specific 3-part sequence through which these enhancements are to be developed and approved. See *Merger Order*, Appendix C, para. 15, which establishes a collaborative process during which the Chief of the FCC's Common Carrier Bureau "shall try to assist and encourage the parties to reach a written agreement" as to how these enhancements will be developed for the 13 states where SBC Communications Inc. has incumbent carrier subsidiaries.<sup>6</sup> The date for completion of the process for OSS enhancements under the *Merger Order* is later than the six month time frame set forth in the Award.<sup>7</sup> This leaves SWBT in the position of potentially having to develop separate, Texas-specific systems enhancements outside the FCC's collaborative process. Indeed, one of the benefits of the *Merger Order* requirements for CLECs is the creation of uniform OSS interfaces throughout SBC's 13-state in-region territory. Unique Texas requirements would undercut the FCC's collaborative process as well as the efficiencies intended to be achieved by this uniformity, for SWBT as well as for CLECs operating in Texas.

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<sup>1</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Third Report And Order And Fourth Further Notice Of Proposed Rulemaking; Adopted: September 15, 1999, Released: November 5, 1999. CC Docket No. 96-98 ("*UNE Remand Order*").

<sup>2</sup> Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations; Memorandum Opinion And Order, Adopted: October 6, 1999, Released, October 8, 1999, CC Docket No. 98-141 ("*Merger Order*").

<sup>3</sup> Texas 271 Agreement, specifically Attachment 25.

<sup>4</sup> *Merger Order*, para. 374 and Appendix C, para. 20.

<sup>5</sup> Award, at 62.

<sup>6</sup> *Merger Order*, Appendix C, para. 15 (c)(2).

<sup>7</sup> *Merger Order*, Appendix C, para. 15.

The Award also appears to rely on the *Merger Order* as a basis for finding that SWBT should *not* be compensated for manually processing requests for loop make-up information.<sup>8</sup> Here, the Award simply misreads the FCC's decision. Appendix C of the *Merger Order* expressly states that the *Merger Order* is not intended to limit SBC's right to charge "for the cost of providing loop make-up information" whether provided via "electronic or non-electronic means."<sup>9</sup>

SWBT submits that briefing these types of issues would allow the Arbitrators to bring the award into conformity with the FCC's *Merger Order* and benefit CLECs and SWBT alike.

• ***More Recent Facts Need to Be Considered***

As the Commission is aware, DSL-related issues are changing rapidly. SWBT submits that the most current information about DSL should be included in any DSL-related arbitration award. An example of why the most current information is needed is the Award's resolution of DPL No. 12(a), which states: "Is there an industry consensus that there is a technically sound basis to implement Binder Group Management Plan?"<sup>10</sup>

To address this question, the Award by necessity relied on dated information, including testimony that is 10 months old. Since that time, there have been a number of meetings of the standards body addressing this issue. The Commission should have the benefit of this information, as well as how the parties' positions may have changed as a result. The Award recites SWBT's policy that it will embrace national standards on spectrum management<sup>11</sup> and the Arbitrators themselves conclude "that national standards or industry-wide accepted standards shall govern the provisioning of xDSL services."<sup>12</sup> Given the Arbitrators' and SWBT's mutual reliance on national standards, it is only appropriate to determine the current state of national standards prior to issuing any award.

Relying on current information is also important in determining how DSL-capable loops are to be conditioned. The Award refers to the "efficient conditioning" of whole binder groups<sup>13</sup> yet elsewhere dictates that particular binder groups not be used for ADSL and voice-grade loops alone. Given that conditioning required for ADSL may be distinct

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<sup>8</sup> Award, at 103, footnote 385 citing *Merger Order*.

<sup>9</sup> *Merger Order*, Appendix C, at para. 36. See also, para. 20.c, which clearly provides that SWBT can recover the cost of providing loop make-up information.

<sup>10</sup> Binder Group Management is a method of managing the spectrum used by DSL technologies.

<sup>11</sup> Award, at p. 37, second full paragraph.

<sup>12</sup> Award, at p. 38.

<sup>13</sup> Award, at p. 98.

from conditioning for other xDSL services,<sup>14</sup> such 'binder group conditioning' may result in ADSL and voice-specific binder groups being appropriate in some contexts.<sup>15</sup> Certainly, how this result corresponds with the national standards body's work should be addressed before policy is made. This could be addressed in additional briefing and the filing of affidavits by the parties.

Similarly, the Award does not have the benefit of current information on SWBT's pre-ordering processes, most recently set forth in the affidavit of SWBT employee Carol Chapman in Project 16251. SWBT's pre-ordering processes have been changed to provide CLECs new options since the June hearing, (e.g., SWBT's pre-qualification now gives theoretical loop length and not just 'red, yellow and green' as stated in the Award). The Award should rely on the most current information about SWBT's processes before addressing the consistency of those processes with legal requirements and how those processes should be changed, if at all. The affidavit of Ms. Chapman could be attached to additional briefing ordered by the Commission.

• ***Reliance on UNE Remand Order***

The Award also relies on the *UNE Remand Order* notwithstanding the fact that the parties did not have the benefit of briefing the application of the *UNE Remand Order*. As an example, the Award relies on the *UNE Remand Order* in finding that collocation of DSLAMs in Remote Terminals is appropriate,<sup>16</sup> going so far as to suggest that SWBT use "line and station transfers, that is, reassign a current service to a different working loop" to make way for<sup>17</sup> DSL providers. Such network reconfiguration was not addressed in the Arbitration Decision Point List,<sup>18</sup> is not required by the *UNE Remand Order*, and raises a number of operational, costing and customer service issues, including whether service outages may be caused by such network reconfiguration. Indeed, when the FCC addressed remote terminal collocation in the *UNE Remand Order*, it concluded that the appropriate resolution was to require the incumbent to unbundled its DSLAM should there be neither collocation space nor copper facilities available. It did not require the incumbent to reconfigure its network. Thus, while the Award cites the FCC, it puts SWBT in the position of facing inconsistent obligations imposed by the Commission and the FCC. Briefing these matters would clarify for the Commission the parties' view as to how best to address issues such as these.

<sup>14</sup> See Award, discussion of DPL No. 29, at p. 95, and note that some xDSL technologies have length limits much shorter than 18,000 feet, making some conditioning unnecessary.

<sup>15</sup> ADSL-specific binder groups-especially for binders serving residential areas-may be attractive to CLECs, given the prospect of line sharing such loops with voice services.

<sup>16</sup> Award, at p. 28-31.

<sup>17</sup> Award, at p. 29.

<sup>18</sup> The Award addresses the subject in response to DPL 6: "If a copper loop is not available from the customer premises to the SWBT central office, does ACI have the right to place appropriate equipment such as DSLAMs at the fiber/copper interface point in SWBT's network?" On its face, DPL 6 does not raise the "line and station" transfer issue.

- ***Application of T2A Attachment 25 In Only Selected Parts***

The Award also relies on some portions of Attachment 25 to the T2A, while ignoring other related portions. SWBT submits that any selective application of the Attachment 25 requires that the parties be permitted to address the appropriateness of that application. As the Commission knows, Attachment 25 was the result of negotiations that included counsel for both Covad and Rhythms, under the auspices of Project 16251. SWBT submits that principles reflected in Attachment 25 as a whole should not be ignored absent a full review of the benefits of the Attachment 25. The Award did not do this. As an example, the Award absolutely prohibits SWBT's use of its Shared Feeder Separation (SFS) spectrum management process, in reliance on section 8.4 of Attachment 25 of the T2A.<sup>19</sup> Yet in Section 8.1 of Attachment 25, the Commission approved the use of selective feeder separation as long as it was used in a "competitively neutral manner consistent with all relevant industry standards."<sup>20</sup> At a minimum, SWBT should be permitted to explain how Section 8 of Attachment 25 should be applied as a whole—and why the Award should not prohibit the use of processes that are expressly permitted in Section 8 of Attachment 25 of the T2A.

- ***Additional Briefing Causes No Operational Impact or Delay***

As the Commission is aware, both Covad and Rhythms have been operating under an Interim Agreement reached in May of 1999. Under its terms, both carriers can continue to operate under that agreement until a permanent agreement is approved by the Commission. As a result, additional briefing will not have a negative effect on either carrier's ability to provide services in Texas. Further, SWBT would be willing to expand the Interim Agreement to address additional operational issues while briefing continues. In any event, the December 30 deadline for completion of an interconnection agreement should be changed to allow for clarification of issues raised by the requested briefing and rehearing.

- ***Conclusion***

It is appropriate for the Commission to permit SWBT to seek a rehearing in these dockets. The Arbitrators relied on selected matters that occurred subsequent to the June hearing without gathering a complete or sufficient record on intervening factual and legal developments. The parties should be allowed to provide their analysis of the subsequent events on which the Arbitrators relied. Further, current factual evidence reflecting SWBT's policies and procedures for pre-ordering, ordering, and provisioning of xDSL-capable loops would assist the Commission in its decision-making. Absent this additional information, the Commission will be left with a record that relies on outdated and incorrect facts. The Commission should not make policy on such a record.

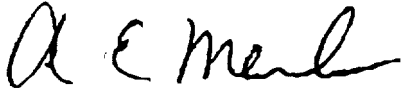
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<sup>19</sup> Award, footnote 176, and text referenced thereto.

<sup>20</sup> See Section 8.1 of T2A, Attachment 25.

For the reasons stated herein, SWBT respectfully requests that the Commission issue an Order allowing the parties to address in rehearing briefs the issues that require rehearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A E Meuleman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ann E. Meuleman

cc: Administrative Law Judge, Katherine Farroba, (PUC)  
Administrative Law Judge, Rowland Curry, (PUC)  
Ms. Dineen Majcher  
Mr. Chris Goodpastor



**SWB**

**January 6, 2000**

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CONCERNING ARBITRATION AWARD AND  
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**Original + 15**

cc: Chairman Pat Wood, III, PUC (hand delivered)  
Commissioner Judy Walsh, PUC (hand delivered)  
Commissioner Brett Perlman, PUC (hand delivered)  
Katherine D. Farroba, Arbitrator, PUC (hand delivered)  
Rowland Curry, Arbitrator, PUC (hand delivered)  
All Parties of Record (via facsimile)

**DOCKET NO. 20226**

PETITION OF RHYTHMS LINKS, INC	§	PUBLIC UTILITY COMMISSION
FOR ARBITRATION TO ESTABLISH	§	OF TEXAS
AN INTERCONNECTION AGREEMENT	§	
WITH SOUTHWESTERN BELL	§	
TELEPHONE COMPANY	§	

**DOCKET NO. 20272**

PETITION OF DIECA COMMUNICATIONS, INC., d/b/a COVAD COMMUNICATIONS	§	PUBLIC UTILITY COMMISSION
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COMPANY	§	

**COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY  
CONCERNING ARBITRATION AWARD AND  
PROPOSED INTERCONNECTION AGREEMENTS**

**I.  
INTRODUCTION**

**TO THE HONORABLE COMMISSIONERS:**

Southwestern Bell Telephone Company ("SWBT") respectfully requests that the Texas Public Utility Commission ("Commission") review and revise the interconnection agreement language ("Agreements") submitted in these dockets. SWBT makes this request in the form of Comments permitted by any interested person under Proc. R. 22.309. In making these Comments, SWBT acknowledges the complicated nature of the issues surrounding DSL technologies and the hard work of the Arbitrators in these dockets.

The Agreements are based on and in response to the requirements of an Arbitration Award ("Award") that ordered the parties to file contractual language with the Commission by December 30, 1999. Adoption of these Agreements would force SWBT

to create Texas-specific Operational Support Systems ("OSS") enhancements in timeframes that are contrary to what will be developed for all CLECs in the 13-state area served by SWBT or its affiliates, under the *SBC/Ameritech Merger Order* issued by the Federal Communications Commission ("FCC").<sup>1</sup> Because the Award's OSS requirements overlap with those in the *Merger Order*, the Award may have the unintended consequence of creating two sets of enhancements when only one is needed. Because CLECs operate in a number of states—and presumably will use the same functionality whenever possible—the uniformity of systems development is conducive to CLECs' efficient operation. The enhancements made under the *Merger Order* will be the result of an industry-wide collaborative process. As a result, CLECs are most likely to rely on the systems enhancements developed under the *Merger Order*.

The Award also orders SWBT to provide pre-ordering processes to DSL providers in some intervals that SWBT may not be able to meet. The better way to insure a competitive market is to apply a parity measure. This would ensure that the intervals provided to SWBT's retail operations and its data affiliate will be the measure for pre-ordering intervals provided CLECs. Using a parity interval would allow the efficiencies of the marketplace to drive SWBT's performance.

With regard to compensation, the Award sets rates at levels that will not reimburse SWBT for costs incurred. In particular, SWBT is ordered to provide CLECs manually-developed Loop Make-up Information for free. This requirement will unjustly enrich CLECs, who will be able to use the labor of SWBT's personnel without charge,

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<sup>1</sup> Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations; Memorandum Opinion And Order; Adopted: October 6, 1999, Released, October 8, 1999, CC Docket No. 98-141 ("Merger Order").

creating inefficient incentives that could prompt CLECs to unnecessarily increase their requests for loop information—all at the expense of SWBT.

CLECs will also be unjustly enriched should the Award's analysis of Loop Conditioning remain, as the requesting CLEC will pay literally a fraction of SWBT's acknowledged costs. Applying the methodology in the Award would be confiscatory and could lead to an 'over-conditioning' of the public network, to the detriment of voice services.

The Award is also both procedurally and substantively flawed due to its reliance on facts and law not addressed by the Petitions for Arbitration and not the subject of the parties' submitted evidence or Post-Hearing Briefs. This is contrary to the Federal Telecommunications Act ("FTA"), the Commission's own rules, and principles of fairness and due process. As a result, SWBT requests the opportunity to brief issues to be reheard before any Commission order is issued in these dockets.

As all parties should concede, xDSL technologies, industry standards, SWBT's relevant processes and procedures, and the regulatory treatment of DSL have changed so greatly since the June hearing that some of the evidentiary record is outdated. The Award indirectly acknowledges the staleness of the record in its reliance on the FCC's *UNE Remand Order*,<sup>2</sup> the *Merger Order*, and the T2A,<sup>3</sup> none of which existed when the June hearing was completed. This gap between the evidentiary record and the Award's analysis leaves the Commission with a record that does not provide a current basis for

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<sup>2</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Third Report And Order And Fourth Further Notice Of Proposed Rulemaking; Adopted: September 15, 1999, Released: November 5, 1999, CC Docket No.96-98 ("*UNE Remand Order*").

<sup>3</sup> Texas 271 Agreement, specifically Attachment 25.

decision on the full scope of the matters addressed in the Award. Since the Award goes well beyond the record in its express reliance upon subsequent developments, it is critical that the parties be given an opportunity to address those changed circumstances. As a result, the Commission should grant SWBT a rehearing opportunity in these dockets prior to approving the Agreements. Absent such a rehearing, the Commission will be left with an Award that goes beyond the record and beyond matters that the parties had the opportunity to address in that record.

SWBT's request is based on the FTA requirement that the Commission resolve arbitrations consistent with "regulations prescribed" by the FCC,<sup>4</sup> as well as "limit its consideration... (of a proposed arbitrated interconnection agreement) to the issues set forth in the Petition and in the response...."<sup>5</sup> The Commission's own rules echo this principle,<sup>6</sup> stating that the Commission "will consider only evidence and argument" concerning the appropriateness of an arbitrated interconnection agreement.

More directly, FTA Section 252(b)(3) and (4) require SWBT to be granted the opportunity to respond to issues raised in an arbitration and Section 252(c)(1) requires the Commission to follow FCC regulations, and specifically the requirements contained in Section 251. Without providing the parties the opportunity to address the application of recent FCC Orders to these dockets, the Commission is at risk of not accurately following FCC regulations. Without allowing additional briefing, the Commission is acting contrary to Section 252(b)(3) and (b)(4)(A).

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<sup>4</sup> Section 252(c)(1).

<sup>5</sup> Section 252(b)(3) and (4).

<sup>6</sup> Proc. R. Section 22.309(e).

The Commission's procedural rules provide for such a post-Award process. Under Proc R. § 22.309(c), procedural or preliminary orders and expedited hearings are contemplated as a means to effectuate the Commission's review of an Award.<sup>7</sup>

Approval of the Award and proposed contract language at this point would result in the Commission considering matters beyond those set forth in the Petition, introduced into evidence, or argued in the briefs—all without the benefit of hearing SWBT's (or other parties') response to those matters. For these reasons, SWBT requests the opportunity for a rehearing to brief matters relied on in the Award about which the parties could not address in their Post-Hearing briefs. In the alternative, SWBT provides its Comments to the Agreements submitted by the parties, as required by the Award.<sup>8</sup>

## II.

### SYSTEMS ENHANCEMENTS – DPL ISSUE NOS. 14(b)-22

#### A. The Award Requires Systems Work That Is Inconsistent With The FCC's SBC/Ameritech Merger Order<sup>9</sup>

Relying on the *Merger Order*,<sup>10</sup> the Award requires SWBT to develop enhanced preordering Datagate and EDI interfaces within six months.<sup>11</sup> The *Merger Order*, however, sets forth a specific 3-part sequence through which systems enhancements are to be developed and approved. See *Merger Order*, Appendix C, para. 15, which

<sup>7</sup> As the Commission is aware, both Covad and Rhythms have been operating under an Interim Agreement reached in May of 1999. Under its terms, both carriers can continue to operate under that agreement until a permanent agreement is approved by the Commission. As a result, additional briefing will not have a negative effect on, or in any way delay, either carrier's ability to provide services in Texas.

<sup>8</sup> As these are Comments filed under Proc. Rule 22.309, the arguments made herein do not waive any rights to appeal or seek other relief in response to the Award, any portion of the Award, or any subsequent Commission actions in these dockets. All such rights are expressly reserved.

<sup>9</sup> This subject is addressed in Covad's DSL Appendix, Section 5.0 and Rhythms' DSL Appendix, Section 6.2 and 6.3.

<sup>10</sup> *Merger Order*, para. 374 and Appendix C, para. 20.

<sup>11</sup> Award at 62.

establishes a collaborative process during which the Chief of the FCC's Common Carrier Bureau "shall try to assist and encourage the parties to reach a written agreement" as to how these enhancements will be developed for the 13 states where SBC Communications Inc. ("SBC") has incumbent carrier subsidiaries.<sup>12</sup> The CLEC community will fully participate in this collaborative process. The date for completion of the process for OSS enhancements under the *Merger Order* is later than the six month time frame set forth in the Award, and will in all likelihood require different enhancements.<sup>13</sup> The Award thus leaves SWBT in the position of having to develop separate, Texas-specific systems enhancements prematurely and outside the FCC's collaborative process. Indeed, one of the benefits of the *Merger Order* requirements for CLECs is the creation of uniform OSS interfaces throughout SBC's 13-state in-region territory. Unique Texas requirements would undercut the FCC's collaborative process as well as the efficiencies intended to be achieved by systems that are uniform across 13 states.

For these reasons, the Commission should, at a minimum, conform the Award so that any systems work related to pre-ordering, ordering and provisioning of DSL-capable loops be consistent with the requirements developed as a result of the *Merger Order*.

**B. There is No Basis For Establishing New Obligations To Inventory Or Create New Databases To Provide Loop Make-Up Information<sup>14</sup>**

The Award relies on the *UNE Remand Order* in its analysis of DPL Nos. 15 to 19(b), yet portions of the Award could be read to rely on the *UNE Remand Order* to

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<sup>12</sup> *Merger Order*, Appendix C, para. 15(c)(2).

<sup>13</sup> *Merger Order*, Appendix C, para. 15.

<sup>14</sup> This subject is addressed in Covad's DSL Appendix, Section 5.5.1 and Rhythms' DSL Appendix, Section 6.2 and 6.3.

require SWBT to take action beyond that required in the FCC Order itself. To be specific, the *UNE Remand Order* found that LECs such as SWBT could not be required to "catalogue, inventory, and make available to competitors Loop Qualification Information" in a form that it does not have available to itself.<sup>15</sup> The FCC went on to state: "If an incumbent LEC has not compiled such information for itself, we do not require the Incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers." (emphasis added)

SWBT should not be required to take any affirmative action to 'catalogue' or 'inventory' information and then construct a database in which to store such information, except as set forth as part of the *SBC Merger Order*. For this reason, Rhythms' proposed language<sup>16</sup> that SWBT provide 'blanket' Loop Qualification on a central office-wide basis must be rejected, based on the FCC's *UNE Remand Order*. The Award cannot be read to require either inventorying of records or the construction of any databases; thus, the Commission should reject any such interpretations as without basis in law and contrary to the *UNE Remand Order*, as well as inconsistent with the intent of the *Merger Order's* 13-state systems enhancements.<sup>17</sup>

This issue is also addressed in SWBT's Explanation of Submitted Proposed Language, filed with the Commission on January 6, 2000, at pages 3-6.

**C. The Award Does Not Take Into Account Recent Process Changes Made During Project No. 16251**

The Award does not have the benefit of more current information on SWBT's pre-ordering processes, most recently set forth in the affidavits of SWBT employee Carol

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<sup>15</sup> See p. 69 of the Award, citing para. 429 of the *UNE Remand Order*.

<sup>16</sup> See section 6.2.2 of Rhythms-SWBT jointly filed DSL Appendix.

<sup>17</sup> The burden on SWBT is compounded by the Award's finding that SWBT should be paid nothing for providing Loop Make-up Information manually. The issue of compensation is addressed in Section III.

Chapman in Project No. 16251 and addressed in the Commission's Open Meeting of December 16, 1999. SWBT's pre-ordering processes have been changed to provide CLECs new options since the June hearing, (e.g., the creation of an expedited process for short 'green' loops; enhancements to SWBT's pre-qualification systems, so that pre-qualification now gives theoretical loop length and not just 'red, yellow and green' as stated in the Award). These enhancements will shorten the total time for pre-ordering and ordering in some circumstances. These additional improvements—and future improvements required by the *Merger Order*—are another reason the Commission should revise the Award so that it comports in total with the changes now pending either under the *Merger Order* or made in Project No. 16251.

**D. The *UNE Remand Order* Should Be Applied Uniformly**

In its discussion of DPL No. 6, the Award relies on the *UNE Remand Order* and the *Merger Order*. (See Award, page 32). The cited portion of the *Merger Order* sets forth a number of conditions to the requirement that the transfer of UNEs to a data affiliate of SWBT may result in an unbundling obligation being imposed on the affiliate. Among the conditions not included in the Award was the application of 'grace period'.<sup>18</sup> SWBT submits that as a matter of policy the Commission should interpret the Award as if it incorporates all germane portions of the cited FCC Orders cited in the Award. This would give all parties a clear resource for determining all obligations. If that is not the Arbitrators' intent, then SWBT submits there is no stated basis for such inconsistent requirements, and the Commission should reject any requirements inconsistent with the cited FCC Orders.

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<sup>18</sup> *Merger Order*, Appendix C, Conditions, Section I.3.e.